THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NWDC RESISTANCE and COALITION OF ANTI-RACIST WHITES,

Plaintiffs,

v.

IMMIGRATION & CUSTOMS ENFORCEMENT, MATTHEW T. ALBENCE, in his official capacity as Acting Director of Immigration and Customs Enforcement; and CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security,

Defendants.

No. 3:18-cv-05860-RBL

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF JURISDICTION

Noted on Motion Calendar:
April 3, 2020

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I. INTRODUCTION

Plaintiffs, immigrant advocacy organizations, ask the Court to enjoin Defendants' policy and practice of unconstitutionally targeting undocumented immigration activists in retaliation for their protected speech. The First Amended Complaint (Dkt. 13) ("FAC") provides examples of this policy, including Defendants' placement of Maru Mora-Villalpando in immigration proceedings because of her advocacy work. (In fact, discovery to date shows ICE aimed "to take away some of her 'clout.'" Miller Decl. Ex. A at 6). Plaintiffs do *not*, as Defendants repeatedly claim, ask the Court to intervene in Ms. Mora-Villalpando's or any other removal proceedings. They ask the Court to enjoin a policy. So construed, Plaintiffs' claims are properly before this Court.

First, 8 U.S.C. § 1252 does not bar jurisdiction. Subsection (g) prohibits jurisdiction over "three discrete actions"—the decisions to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders"[1]—and only in the context of "litigation over *individual…* decisions, rather than" policy changes.[2] Subsections (a)(5) and (b)(9) limit jurisdiction over only "review of orders of removal." These provisions do *not* bar "all claims incidentally related to a removal proceeding."[3] Nor do they bar claims alleging Immigration & Customs Enforcement ("ICE") arrested, detained, and initiated proceedings when "motivated by" discriminatory animus.[4] Defendants do not provide "clear and convincing evidence" otherwise.[5]

Second, Plaintiffs have standing to bring their claims. The FAC sufficiently alleges Plaintiffs have suffered an injury-in-fact because the challenged policy forces them to divert resources away from their mission and chills La Resistencia's members from exercising their

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[1] *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis original) ("*AADC*").
[2] *Regents of the Univ. of California v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476, 503-04 (9th Cir. 2018), *cert. granted sub nom. Dep't of Homeland Sec. v. Regents of the Univ. of California*, 139 S. Ct. 2779, 204 L. Ed. 2d 1156 (2019) (emphasis original).
[3] *Inland Empire - Immigrant Youth Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 4998230, at *13 (C.D. Cal. Apr. 19, 2018)
[4] *See Medina v. U.S. Dep't of Homeland Sec.*, No. C17-218-RSM-JPD, 2017 WL 2954719, at *15 (W.D. Wash. Mar. 14, 2017).
[5] *Am. Fed'n of Gov't Employees Local 1 v. Stone*, 502 F.3d 1027, 1035 (9th Cir. 2007) (internal citations omitted) ("*AFGE*").

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constitutional rights to speak out. Given ICE's expressed disdain for Plaintiffs and demonstrated practice of targeting, Plaintiffs face a credible threat of retaliation, and their injury will not be redressed absent an injunction.

For these reasons, Plaintiffs respectfully ask the Court to deny the motion to dismiss.

II. BACKGROUND

Since January 2017, ICE has engaged in a pattern and practice of targeting outspoken activists who publicly criticize U.S. immigration law, policy, and enforcement. FAC ¶ 9. ICE has investigated, surveilled, harassed, raided, arrested, detained, and deported activists immediately following press appearances and news conferences. *Id* ¶ 10. It has detained spokespeople and directors of immigration advocacy organizations. *Id.* It has surveilled the organizations' headquarters and targeted their members. *Id.* These actions have been criticized by members of Congress, the Office of the United States High Commissioner for Human Rights, and the Inter-American Commission on Human Rights. *Id.* ¶¶ 11-15.

The FAC provides examples of this pattern and practice—including Seattle-area activist and La Resistencia president Maru Mora-Villalpando, who was issued a Notice to Appear because of her "anti-ICE protests," FAC ¶¶ 44-52; Pacific County activist Baltazar Aburto Gutierrez, who was arrested because, as an ICE agent told him, he had spoken to the newspaper, *id*. ¶ 20; Daniela Vargas, who was arrested after she left a press conference supporting the Deferred Action for Child Arrivals ("DACA") program, *id*. ¶¶ 16-17; and Ravi Ragbir, who was detained after protests at his ICE check-in meeting, which ICE characterized as an unwanted "display of wailing kids and wailing clergy," *id.* ¶¶ 1, 21-23.

Plaintiff La Resistencia (formerly NWDC Resistance) is dedicated to ending the detention and deportation of immigrants. FAC ¶ 4. Plaintiff Coalition of Anti-Racist Whites ("CARW")—an organization of white people in Seattle devoted to undoing institutional racism—works closely with La Resistencia to serve the same goals. *Id.* ¶¶ 5, 69-71; Mora-Villalpando Decl. ¶ 1. Both have felt the impact of ICE's unlawful actions, which have had their intended effect of disrupting advocacy groups and chilling speech.

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For example, in the wake of ICE's action against Ms. Mora-Villalpando, two La Resistencia leaders resigned. FAC ¶ 90. La Resistencia was forced to cancel a major protest march because Ms. Mora-Villalpando could not organize and lead the event. *Id.* ¶ 63. CARW was unable to conduct its activities to support detainees and their families because it has been forced to divert resources to support Ms. Mora-Villalpando. *Id.* ¶¶ 75-81.

The impacts of ICE's unconstitutional practice continue. La Resistencia relies heavily on information from detainees and their families to fulfill the group's objective of combating and highlighting unjust ICE actions, but many now fear speaking out or speak anonymously, which makes it difficult to humanize their stories. Mora-Villalpando Decl. ¶ 4. For instance, on March 17, 2020, Ms. Mora-Villalpando spoke with a woman struggling to reach her detained family member. *Id.* ¶ 5. Ms. Mora-Villalpando asked the woman to speak to the media, even anonymously, and she refused, saying, "Look what happened to you." *Id.*

The majority of La Resistencia's undocumented members fear being associated with the group. *Id.* ¶ 6. La Resistencia has been forced to change the way it operates to accommodate those who require anonymity and to protect the safety of its members. *Id.* CARW helped La Resistencia identify an organization to provide training on security during public events for La Resistencia's members. *Id.* The group has implemented measures at its events such as a "buddy" program—so no one leaves alone—and observers to watch the crowds. *Id.* CARW assists by escorting members and serving as observers. *See id.*

ICE could detain Ms. Mora-Villalpando at any time and greatly disrupt Plaintiffs' advocacy. Further, any retaliation against La Resistencia's members would force the groups to support those members in the same way they have supported Ms. Mora-Villalpando. Mora-Villalpando Decl. ¶ 8. Even retaliation against activists who are not members would force La Resistencia to divert resources because La Resistencia is a leader in the activist community with unique connections to detainees and their families. *Id.* La Resistencia maintains contact with and supports at least three other individuals in the country whom ICE has targeted. *Id.* ¶

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10. La Resistencia also helped put together a panel of six targeted activists to participate in a hearing before the Inter-American Commission for Human rights. *Id.* ¶ 9.

Documents obtained in discovery support Plaintiffs' allegations. ICE surveilled protesters outside NWDC. Miller Decl. Ex. D. ICE viewed Ms. Mora-Villalpando and La Resistencia as "the instigators of all turmoil surrounding the [Northwest Detention Center ('NWDC')] for the past several years." Miller Decl. Ex. A, at 7. ICE agents surmised that "[p]lacing her into proceedings might actually *take away some of her 'clout,'" id.* at 6, even though she was a "*low priority*" under new enforcement policies, Miller Decl. Ex. C, at 2. Further, agents expressed antagonism toward Ms. Mora-Villalpando and La Resistencia, with one commenting on their participation in a nearby event that it was "all I can do to not go and take these punks on." Miller Decl. Ex. B, at 1.

In the FAC, filed December 20, 2018, Plaintiffs allege ICE's actions violate the First Amendment, by retaliating against political speech and preventing political speech, assembly, and association; the Due Process Clause of the Fifth Amendment, which protects Plaintiffs' liberty interest in speaking, associating, and receiving information on issues of political import; and the Equal Protection Clause of the Fifth Amendment because ICE's actions disproportionately impact Latinx people and are motivated by discriminatory animus. FAC ¶¶ 85-96; 104-107. Plaintiffs also assert a claim under the Administrative Procedure Act, based on the government's violation of executive orders concerning immigration and free speech. *Id.* ¶¶ 97-103. Plaintiffs do not ask the Court to intervene in any removal proceedings. Instead, they ask it to enjoin "ICE's policy of retaliatory enforcement of the immigration law against activists based on their protected political speech about U.S. immigration law." *Id.* at 20-21 (prayer for relief).

On March 19, 2019, Defendants filed a motion to dismiss or stay this case under the first-to-file rule, alleging the issues and parties overlapped with *Ragbir v. Homan*, No. 1:18-cv-01159-PKC (S.D.N.Y., ongoing). Dkt. 19. The Court denied the motion. Dkt. 30. Since then, the parties have engaged in discovery. But discovery does not close until June 12, 2020, and

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Plaintiffs expect substantially more documents from Defendants. Miller Decl. ¶ 2. Trial is set for October 26, 2020. More than a year after this litigation began, the government now asks the Court to dismiss this action for lack of jurisdiction.

III. ARGUMENT

On a "motion to dismiss for lack of subject matter jurisdiction," the Court must "accept as true all facts alleged in the complaint and construe them in the light most favorable to plaintiffs, the non-moving party." *Snyder & Assocs. Acquisitions LLC v. United States*, 859 F.3d 1152, 1156-57 (9th Cir. 2017), *opinion amended on other issues*, 868 F.3d 1048. The Court may consider evidence outside the pleadings, but Plaintiffs have no burden to introduce facts beyond the complaint where, as here, Defendants "introduced no evidence contesting any of the allegations." *Ryan v. Salisbury*, 382 F. Supp. 3d 1031, 1047 (D. Haw. 2019) (quoting *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009)).

A. Section 1252 Does Not Strip This Court of Subject Matter Jurisdiction.

Courts require "'clear and convincing' evidence of congressional intent . . . before a statute will be construed to restrict access to judicial review." *AFGE*, 502 F.3d at 1035 (9th Cir. 2007) (quoting *Johnson v. Robison*, 415 U.S. 361, 374 (1974)). Defendants have not met this heightened standard. Instead, they stretch the statute beyond recognition and ignore Ninth Circuit precedent directly rejecting their position.

1. Section 1252(g) Does Not Bar Jurisdiction Here.

Under 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." Congress did not intend Section 1252(g) "to deny any judicial forum for a colorable constitutional claim." *Webster v. Doe*, 486 U.S. 592, 603 (1988). "In fact, what § 1252(g) says is much narrower. The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. §

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1252(g)) (emphasis added by *AADC* court); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (citing *AADC*, 525 U.S. at 487) ("Section 1252(g)'s jurisdictional bar is to be construed narrowly."). Other actions—"such as the decisions to open an investigation [or] to surveil the suspected violator"—are not barred, even if they "may be part of the deportation process." *AADC*, 525 U.S. at 482. "By its terms, [Section 1252(g)] does not prevent the district court from exercising jurisdiction over . . . 'general collateral challenges to unconstitutional practices and policies used by the agency.'" *Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998) (quoting *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 492 (1991)).

Under Defendants' reading, Section 1252(g) would bar review of *any* claims that could ultimately affect the government's decision to commence immigration proceedings. The Ninth Circuit has firmly foreclosed such a broad reading, recently confirming that 1252(g) applies *only* to "[e]fforts to challenge the refusal to exercise … discretion *on behalf of specific aliens*"—and not to challenges to the constitutionality of agency policies. *Regents*, 908 F.3d at 503 (quoting *AADC*, 525 U.S. at 485) (emphasis added by *Regents* court). In *Regents*, plaintiffs sued to enjoin rescission of DACA, an Obama administration policy implemented to defer removal for individuals who came to the United States as children. *See id.* at 489-90, 492-93. The government argued that the court lacked jurisdiction under *AADC*. *Id.* at 503-04. The Ninth Circuit rejected that argument: "It seems quite clear… that *AADC* reads Section 1252(g) as responding to litigation over *individual* 'no deferred action' decisions, rather than a programmatic shift like the DACA rescission." *Id.* (emphasis original).

Similarly, in *Catholic Soc. Servs., Inc. v. INS*, 232 F.3d 1139, 1141 (9th Cir. 2000), the court held Section 1252(g) did not bar a challenge to Immigration and Naturalization Services ("INS") guidance narrowly interpreting terms of a "one-time legalization program" for undocumented immigrants. That a "policy choice" may be "an ingredient in a subsequent decision to commence proceedings against particular individuals" does not render Section 1252(g) applicable. *Regents*, 908 F.3d at 504 (describing *Catholic Social Services*). *See also Jimenez-Angeles*, 291 F.3d at 599 (no jurisdiction over individual plaintiff's "argument that the

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INS should have commenced deportation proceedings against," but there was jurisdiction over challenge to retroactive application of statutory rules to plaintiff's immigration case); *Walters*, 145 F.3d at 1052 (jurisdiction to enjoin deportations in challenge to INS administrative procedures because plaintiff's "objective was not to obtain judicial review of the merits of their INS proceedings, but rather to enforce their constitutional rights to due process in the context of those proceedings.").

Here, Plaintiffs challenge the constitutionality of ICE's "policy choice" of targeting activists—not any of the three "discrete actions" within Section 1252(g)'s scope. Plaintiffs ask the Court to invalidate "ICE's policy of retaliatory enforcement of the immigration law against activists" and "restrain[] Defendants from selectively enforcing the immigration law against any individual… based on the individual's protected political speech." FAC at 20-21. Further, Plaintiffs are advocacy groups—not individuals. Defendants repeatedly argue Plaintiffs assert claims "on [] behalf of" individuals identified in the FAC and thus require "adjudication of the specific immigration status of each person." Motion to Dismiss for Lack of Jurisdiction (Dkt. 41) ("Mot.") at 4, 1. But that mischaracterizes the FAC, which identifies individuals ICE targeted only to show the existence of an unconstitutional policy. Plaintiffs do not ask the Court to review a decision to "commence proceedings, adjudicate cases, or execute removal orders" with respect to any individual.

The cases Defendants cite are inapposite, as they were brought by *individuals* seeking relief with respect to their own immigration proceedings. *See Gebreslasie v. United States Citizenship & Immigration Servs.*, 778 F. App'x 532, 533 (9th Cir. 2019) (individual challenged agency's failure to commence removal proceedings against him); *Balogun v. Sessions*, 330 F. Supp. 3d 1211 (C.D. Cal. 2018), *appeal dismissed sub nom. Balogun v. Barr*, No. 18-56258, 2019 WL 4729845 (9th Cir. July 30, 2019) (individual sought injunction preventing ICE from executing removal order); *Palacios-Bernal v. Barr*, No. 519CV01963RGKMAA, 2019 WL 5394019, at *4 (C.D. Cal. Oct. 22, 2019) (individual sought stay of her removal). Similarly, in *AADC*, the plaintiffs did not seek to enjoin an unconstitutional policy, but brought suit "seeking

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to prevent the initiation of deportation proceedings" against themselves. *AADC*, 525 U.S. at 474; *see also id.* at 487 ("Respondents' challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g).").

Permitting Plaintiffs' claims would not "create a split of authority" with the Second Circuit, as Defendants suggest. In *Ragbir v. Homan*, 923 F.3d 53 (2d Cir. 2019), the plaintiffs not only challenged ICE's unconstitutional policy, but also asked the court to enjoin Ragbir's deportation. *Ragbir v. Homan*, No. 18-CV-1159 (PKC), 2018 WL 2338792, at *1 (S.D.N.Y. May 23, 2018). The district court held it lacked jurisdiction to consider the request to enjoin deportation, but asked for more briefing on the "pattern and practice" issue, briefing that has been complete since October 2018. *Id.* at *9; *Ragbir v. Homan*, No. 18-CV-1159, Dkt. 98, 109. Neither the district court nor the Second Circuit has resolved whether 1252(g) applies to claims concerning the pattern and practice of targeting activists. There can therefore be no "split of authority." *See* Mot. at 9. Defendants also fail to mention that the Second Circuit reversed the trial court and ordered it to consider Ragbir's habeas corpus claim because the "alleged basis of discrimination is so outrageous." 923 F.3d at 62 (quoting *AADC*, 525 U.S. at 491-92).

2. Neither Section 1252(b)(9) nor Section 1252(a)(5) Bars Jurisdiction.

Nor do Section 1252(a)(5) and (b)(9) bar jurisdiction. Under Section 1252(a)(5), a petition for review in the court of appeals "shall be the sole and exclusive means for judicial review of an order of removal." Similarly, under Section 1252(b)(9), "[w]ith respect to review of an order of removal . . . , [j]udicial review of all questions of law and fact… arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section."

"[B]oth §§ 1252(a)(5) and 1252(b)(9) apply only to those claims seeking *judicial review of orders of removal*." *Singh v. Gonzalez*, 499 F.3d 969, 978 (9th Cir. 2007) (emphasis added). The purpose of these claim-channeling provisions is to "limit all aliens to one bite of the apple with regard to challenging an order of removal." *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012) (internal citation omitted). It does not matter that a plaintiff's "ultimate goal" is

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to "overturn [a] final order of removal," as the statute applies "only with respect to review of an order of removal," even if its language "could be viewed as broader." *Singh*, 499 F.3d at 979 (statute did not bar review of claim for ineffective assistance of counsel after plaintiff's attorney failed to timely appeal an immigration court decision); *see also Martinez*, 704 F.3d at 622 (Sections 1252(a)(5) and (b)(9) do "not eliminate the ability of a court to review claims that are 'independent of challenges to removal orders'"). Determining the difference "between permissible independent claims and prohibited collateral attacks 'requires a case-by-case inquiry'" and "'will turn on the substance of the relief that a plaintiff is seeking.'" *Martinez*, 704 F.3d at 622 (first quoting *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir.2011), then *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir.2011)).[6]

A plurality of the Supreme Court recently confirmed the limited applicability of Section 1252(b)(9) in *Jennings v. Rodriguez*, finding the provision does not bar jurisdiction to hear a challenge to an undocumented immigrants indefinite detention, even when the purpose of the detention is to lead ultimately to removal proceedings. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). The plaintiffs in Jennings challenged the government's application of statutes permitting their detention, arguing that prolonged detention without a bond hearing was unconstitutional. *Id.* at 839. Five justices rejected the broad interpretation of Section 1252(b)(9) that Defendants advocate here. The plurality acknowledged the challenged actions "arise from the actions taken to remove these aliens" in the "sense that if those actions had never been taken, the aliens would not be in custody at all. But this expansive interpretation of [Section] 1252(b)(9) would lead to staggering results." *Id.* at 840 (internal citations omitted). The plurality compared to Section 1252(g), for which the Supreme Court "did not interpret" the same "arising from" language "to sweep in any claim that can technically be said to 'arise

[6] Defendants rely on *Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221 (S.D.N.Y. 2019), *appeal withdrawn*, No. 19-3659, 2019 WL 7834321 (2d Cir. Nov. 21, 2019), to argue that the "ultimate goal" of overturning a final removal order precludes review, but that is just the opposite of what the Ninth Circuit concluded in *Singh*. In fact, the *Asylum Seeker* court directly rejected Ninth Circuit precedent, which binds this Court. *See id.* at 227. Regardless, Plaintiffs do not seek to overturn any individual's final removal order. *Asylum Seeker* is also distinguishable because the court's decision hinged on the fact that plaintiffs sought to "bar the Government from executing removal orders that it has *already* obtained." *Id.* at 226 (emphasis original).

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from' the three listed actions of the Attorney General. Instead, we read the language to refer to *just those three specific actions themselves*." *Id.* at 841 (citing *AADC*, at 482-83) (emphasis added). Thus, 1252(b)(9) is limited to claims requiring review of removal orders.[7]

Courts have recognized that *Jennings* "departs from" prior Ninth Circuit precedent because it "reject[s]… an 'expansive' interpretation of 'arising from' that would sweep a claim into Section 1252(b)(9) simply because an alien is in removal proceedings or a removal action was taken." *Cancino-Castellar v. Nielsen*, 338 F. Supp. 3d 1107, 1116 (S.D. Cal. 2018) (reconsidering dismissal of due process claim based on *Jennings*).

Consistent with these principles, courts in this circuit recognize that Section 1252(b)(9) does not bar review of a constitutional challenge to ICE's conduct in "rounding up" immigrants for improper or discriminatory purposes. In *Nak Kim Chhoeun v. Marin*, 2018 WL 1941756 (C.D. Cal. Mar. 26, 2018), *appeal dismissed*, 2019 WL 2273437 (9th Cir. Mar. 29, 2019), plaintiffs sought to represent a putative class of "Cambodian nationals who were abruptly rounded up by immigration officials, detained, and threatened with imminent deportation." *Id.* at *1. The government had obtained a final removal order against one named plaintiff and placed another in removal proceedings, but both were released and allowed to remain in the U.S. *Id.* at *1-*3. Plaintiffs alleged they were "abruptly detained . . . not because anything has changed in their personal circumstances, but because the Government wishes to put pressure on Cambodia to facilitate U.S. removal efforts." *Id.* The court concluded it had jurisdiction because the plaintiffs "do not challenge any final order of removal, but rather challenge ICE's conduct in rounding up Petitioners and attempting to deport them before they could challenge their removal orders in the appropriate courts." *Id.* at *4 (citing *Flores–Torres v. Mukasey*, 548 F.3d 708, 711 (9th Cir. 2008)); *see also Medina*, 2017 WL 2954719, at *15 (Section 1252(a)(5) and (b)(9) did not bar challenge to "ICE officers' actions in connection with [plaintiff's] arrest, initial detention, and four-hour interrogation," which the plaintiff alleged "were motived by

[7] In claiming *Jennings* "confirmed" Section 1252(b)(9) bars jurisdiction over a "decision to detain . . . in the first place or to seek removal" (Mot. at 10), Plaintiffs quote dicta while ignoring the case's holding. Similarly, Defendants overstate *AADC* by relying on dicta. *See* Mot. at 10.

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racial animus and false assumptions"), *report and recommendation adopted*, 2017 WL 5176720, at *6 (W.D. Wash. Nov. 8, 2017)[8]; *cf. Aden v. Nielsen*, 409 F. Supp. 3d 998, 1005 (W.D. Wash. 2019) (Section 1252(a)(5) did not bar review of due process challenge to government's selection of Somalia as country for removal after final removal order).

Under this authority, Section 1252(a)(5) and (b)(9) present no bar. Plaintiffs ask the Court to declare ICE's existing policy of targeting activists unconstitutional and to order Defendants to apply immigration law accordingly. How such relief would apply to any individuals is beyond the scope of this case. Plaintiffs "are not asking for review of an order of removal … and they are not even challenging any part of the process by which their removability will be determined." *Jennings*, 138 S. Ct. at 841. Thus, the "substance of the relief" Plaintiffs seek shows their claims are "independent of challenges to removal orders."

Under Defendants' approach, courts could not consider anything that could even be loosely categorized as a "decision about removal," and the cases discussed above would be wrong. The inevitable result would be to prevent a challenge to any ICE conduct if finding it unconstitutional would affect whom ICE chooses to act against in the future. *See, e.g.*, Mot. at 13. This is essentially the argument the government made and lost in *Regents*—i.e., that 1252(b)(9) barred review of DACA rescission because it reflected the executive's discretion regarding against whom to initiate proceedings. *Regents*, 908 F.3d at 504 n.19 (rejecting application of Section 1252(b)(9) because it "applies only to those claims seeking judicial review of orders of removal") (citation and quotations omitted). If Section 1252(b)(9) had this effect, ICE could implement a policy of targeting only Latinx people for surveillance, investigation, or detention, and such a policy would be insulated from constitutional challenge.

[8] Magistrate Judge Donahue issued a report and recommendations denying the government's motion to dismiss, and Judge Martinez delayed consideration of that aspect of the report and recommendations. *See Medina v. U.S. Dep't of Homeland Sec.*, No. C17-218 RSM, 2017 WL 1101370 (W.D. Wash. Mar. 24, 2017). The government then re-filed its motion to dismiss, and Judge Martinez denied the motion on the same grounds. The Court later concluded "circumstances of this case have changed" and dismissed under 1252(g). *Medina v. U.S. Dep't of Homeland Sec.*, 408 F. Supp. 3d 1224, 1238 (W.D. Wash. 2019).

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None of the cases Defendants rely on supports such a broad approach. In *Martinez v. Napolitano*, the Ninth Circuit held the district court lacked jurisdiction over the plaintiff's claims that the Board of Immigration Appeals ("BIA") had erred in denying his asylum request because the denial "was the basis of [the BIA's] removal order." 704 F.3d at 623. As a result, the court said the claims were "nothing more than indirect attacks on his order of removal." *Id.* Defendants latch onto the word "indirect" to suggest Section 1252's scope is amorphous and expansive, but the "indirect" challenge in *Martinez* was simply a challenge to the merits of the determination that the plaintiff was subject to removal.[9]

Justice Alito's plurality opinion in *Jennings* "counsels that courts should consider whether an 'extreme' interpretation of 'arising from' in Section 1252(b)(9) would make a claim 'effectively unreviewable.'" *Cancino-Castellar*, 338 F. Supp. 3d at 1114 (quoting *Jennings*, 138 S.Ct. at 840); *see also Huiwu Lai v. United States*, C17-1704-JCC, 2018 WL 1610189, at *3 (W.D. Wash. Apr. 3, 2018) (finding jurisdiction when "absent relief from this Court, Plaintiff may not have an opportunity for relief from some of his claims"). The *Jennings* plurality recognized that, by "the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place," or "it is possible that no such order would ever be entered," which would deprive the detainee of "any meaningful chance for

[9] Defendants cite many cases, but none involves comparable facts, and most involve an individual's challenge to their own ongoing removal proceedings. *See, e.g., Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (immigrant argued in habeas petition he was not removable because his convictions did not qualify as aggravated and thus asked court to "consider the underlying merits of his removal order"); *Yong Guo v. Nielson*, 2019 WL 2515166, at *1 (W.D. Wash. June 18, 2019) (court lacked jurisdiction over immigrant's challenge to his own ongoing removal proceedings, but not detention claims); *Anaya Murcia v. Godfrey*, 2019 WL 5597883, at *5 (W.D. Wash. Oct. 10, 2019), *report and recommendation adopted*, 2019 WL 5589612 (W.D. Wash. Oct. 30, 2019) (no jurisdiction over claim that ICE must facilitate immigrant's return to the U.S. to participate in removal proceedings because claim could not be divorced from ongoing proceedings); *Uppal v. Kelly*, 2017 WL 4621172, at *5 (W.D. Wash. Aug. 10, 2017), *report and recommendation adopted*, 2017 WL 4573922 (W.D. Wash. Oct. 13, 2017); *Gomez v. McAleenan*, 2019 WL 5722619, at *3 (N.D. Cal. Nov. 5, 2019) (no jurisdiction over challenge to immigration judge's finding that yearly cap precluded issuance of visa number where request for visa was part of application to cancel removal order); *Cancino-Castellar*, 338 F. Supp. 3d at 1116 (no jurisdiction over Fourth Amendment claim requiring court to "assess[] whether an individual is removable from the United States and the government's evidence on that issue" but finding jurisdiction over Due Process challenge to delays in presenting detained aliens before immigration judge); *Ketsoyan v. U.S. Dep't of Justice*, 2019 WL 4261881, at *3 (C.D. Cal. July 2, 2019) (no jurisdiction where immigrant requested "that the Court prevent Defendants from revoking his supervision and removing him to Armenia"); *Barros Anguisaca v. Decker*, 393 F. Supp. 3d 344, 349 (S.D.N.Y. 2019) (requesting the court to stay his removal).

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judicial review." 138 S.Ct. at 840. Similarly, Defendants may target those who speak out on immigration issues through surveillance, harassment, detention, or other actions without ever obtaining a removal order, leaving those targeted with no meaningful chance for judicial review of the constitutional violations they suffer. As alleged in the FAC, such actions violate the rights and chill the protected speech of Plaintiffs and their members. Under Defendants' "extreme" interpretation of 1252(b)(9), any claims seeking to vindicate rights ICE violates by unlawfully targeting activists are "effectively unreviewable." *Jennings*, 138 S.Ct. at 840.

B. Plaintiffs Have Standing to Bring Their Claims.

"When, as here, the plaintiff[s] defend[ ] against a motion to dismiss at the pleading stage, 'general factual allegations of injury resulting from the defendant[s]' conduct may suffice[.]'" *See Oregon v. Legal Services Corp.*, 552 F.3d 965, 969 (9th Cir. 2009) (quoting, *inter alia, Lujan*, 504 U.S., at 561, 112 S.Ct. 2130). Further, "once the court determines that one of the plaintiffs has standing, it need not decide the standing of the others." *Melendres v. Arpaio*, 695 F.3d 990, 999 (9th Cir. 2012) (quoting *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir.1993)).

Plaintiffs have standing as an organization. "[A]n organization 'may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.'" *AFGE*, 502 F.3d at 1030 (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). As with individuals, organizational standing "consists of three elements: (1) injury in fact; (2) causation; and (3) redressability." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) (internal quotations and citations omitted).

1. Injury in Fact

"[T]he Supreme Court held that where the defendants' 'practices have perceptibly impaired the organizational plaintiff's ability to provide the services it was formed to provide… there can be no question that the organization suffered injury in fact.'" *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 748 (9th Cir. 1991) (quoting *Havens*

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Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982)). This means that "an organization may establish 'injury in fact if it can demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular injurious behavior in question.'" *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1134 (9th Cir. 2019) (quoting *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004)). Further, "[o]rganizations are not required to demonstrate some threshold magnitude of their injuries.… [P]laintiffs who suffer concrete, redressable harms that amount to pennies are still entitled to relief." *E. Bay Sanctuary Covenant v. Trump*, --- F.3d ---, No. 18-17274, 2020 WL 962336, at *10 (9th Cir. Feb. 28, 2020) ("[O]ne less client that they may have had but-for the Rule's issuance is enough.") (footnote omitted).

A long line of Ninth Circuit cases applies these principles to analogous facts. For instance, in *The Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518 (9th Cir. 1989), immigration authorities secretly attended and surveilled church services to investigate "an effort by a loosely knit group of clergy and lay people to aid refugees from El Salvador and Guatemala." *Id.* at 520. The Ninth Circuit held the churches had standing to bring First and Fourth Amendment claims because they

> alleg[ed] that as a result of the [INS's] surveillance of worship services, members have withdrawn from active participation in the churches, a bible study group has been canceled for lack of participation, clergy time has been diverted from regular pastoral duties, support for the churches has declined, and congregants have become reluctant to seek pastoral counseling and are less open in prayers and confessions.

Id. at 521-22. The government argued plaintiffs lacked standing because they had alleged only "subjective chill," but the court disagreed, holding that the churches "claim[ed] that the INS surveillance has chilled *individual congregants* from attending worship services, and that this effect on the congregants has in turn interfered with the churches' ability to carry out their ministries," an injury that is "distinct and palpable." *Id.* at 522 (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)) (emphasis original).

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Similarly, the Ninth Circuit has recognized the inherent injury when an organization's members fear their participation will lead to enforcement of the challenged law or policy against them. In *Valle del Sol Inc. v. Whiting*, plaintiffs challenged an Arizona statute that criminalized harboring and transporting undocumented immigrants. 732 F.3d 1006, 1012 (9th Cir. 2013). One group established that it often buses undocumented group members to organizational functions. *Id.* at 1018. As a result, the organization had standing because it "reasonably fears that its staff will be subject to investigation or prosecution under the statute and may be deterred from conducting [the organization's] functions, which would frustrate its organizational mission." *Id.*

In *AFGE*, a former Transportation Security Administration ("TSA") employee and union alleged "TSA violated their First Amendment rights by disciplining and then discharging" the employee for posting and discussing union materials. 502 F.3d at 1029-30. The district court granted a motion to dismiss, concluding the union lacked standing, but the Ninth Circuit reversed, holding that the union satisfied the injury-in-fact element because the complaint alleged the employee's "termination has had a 'chilling effect on other screeners from joining [the union]'" and thus "interfered with [the union's] ability to solicit membership and communicate its message." *Id.* at 1032 (quoting complaint). The complaint failed to clearly allege that the employee was a member of the union, but the court held "our result would be the same" even if he was not because his termination injured the organization. *Id.*

Plaintiffs' allegations easily meet the standard set by these authorities. ICE's policy has had a resounding chilling effect on La Resistencia, which has "interfered with [its] ability to carry out [its mission]." *Presbyterian Church*, 870 F.2d at 522. As in *Valle del Sol* and *AFGE*, the effect is to drive away La Resistencia's members. *See* FAC ¶ 62. Some members stopped attending, and others participate only anonymously. *Id.* ¶ 66; Mora-Villalpando Decl. ¶ 7. Further, the policy has limited La Resistencia's ability to communicate with and broadcast the stories of current and former detainees, many of whom are no longer willing to speak or will only speak anonymously. FAC ¶ 67; Mora-Villalpando Decl. ¶ 5. La Resistencia's "mission

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depends on undocumented persons speaking out." FAC ¶ 68. As in *Presbyterian Church*, these allegations establish ICE's conduct "has chilled *individual* [members] from [participating]," and this effect "has in turn interfered with the [La Resistancia's] ability to carry out [its mission]." 870 F.2d at 522 (emphasis original).

Chilling effect aside, the frustration of La Resistencia's mission caused by Defendants' unconstitutional policy is obvious. La Resistencia was founded and is led by undocumented persons who aim to "mak[e] the public aware of ICE's practices." FAC ¶¶ 44, 53-54. Plaintiffs credibly allege Defendants have implemented a policy of targeting exactly such persons. Few things could be more disruptive for an organization than losing its leaders. Mora-Villalpando Decl. ¶ 10. ICE self-servingly claims its actions had no impact on the organization's mission, but based on the facts, one can hardly avoid inferring that disruption of La Resistencia's mission was ICE's goal.[10] *See* FAC ¶¶ 48-50; Miller Decl. Exs. A, B. (expressing hope that initiation of proceedings against Ms. Mora-Villalpando would "take away some of her 'clout'" and desire to "take on" the "punks").

Further, La Resistencia sufficiently alleges that ICE's policy—which included its leader, Maru Mora-Villalpando—has caused and continues to cause La Resistencia to divert resources to combat ICE's actions. La Resistencia diverted donations to Ms. Mora-Villalpando's defense team, recruited and worked with lawyers to coordinate political actions, helped Ms. Mora-Villalpando prepare for the immigration process, coordinated a press strategy, and organized rallies on her behalf. FAC ¶ 61. La Resistencia had planned a "Road to Detention" campaign that would have included a march between Tacoma and the northern border, but ICE's sudden pursuit of Ms. Mora-Villalpando forced the organization to drop the plan entirely. *Id.* ¶ 63. La Resistencia continues to divert resources toward safety measures to protect members from targeting. Mora-Villalpando Decl. ¶ 7.

[10] Defendants argue Plaintiffs face a hurdle to establish standing because they are not "the object of the government action or inaction [they] challenge[]." Mot. at 15 (citation omitted). Plaintiffs are not the individuals targeted, but the allegations in the complaint credibly suggest ICE acted to stifle Plaintiffs' speech.

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CARW's allegations are also sufficient. ICE's targeting of immigration activists—including but not only Ms. Mora-Villalpando—frustrates CARW's mission because CARW's agenda is set by these activist leaders. FAC ¶¶ 71-72. CARW's activism includes logistics for events such as solidarity days at the NWDC. *Id*. ¶77. CARW assists with La Resistencia's "buddy" program, by serving as observers at events, and by locating organizations to provide safety training—all to address ICE's retaliatory enforcement. CARW diverted resources to Ms. Mora-Villalpando's removal proceedings, which caused it to miss a planned solidarity day and left it unable to accompany an immigrant to his ICE check-in meeting. *Id*. ¶¶78-82. Further, ICE's targeting of immigration activists—including but not only Ms. Mora-Villalpando—frustrates CARW's mission because CARW's agenda is set by these activist leaders. *Id.* ¶ 72.

Such allegations are more than sufficient to establish injury. *See El Rescate Legal Services, Inc.*, 959 F.2d at 748 (organizations serving refugee clients with limited English proficiency had standing to challenge "practice of using incompetent translators" for immigration court hearings); *see also E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 766 (9th Cir. 2018) (finding sufficient diversion of resources where challenged rule barring asylum for migrants who entered between designated ports of entry caused organization to conduct education and outreach initiative and increase in family-unit clients, which forced organizations to divert resources from other clients); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (finding sufficient diversion of resources where anti-solicitation ordinance caused organization to assist day laborers during their arrests and meet with workers about the status of the ordinance); *We Are Am./Somos Am., Coal. of Arizona v. Maricopa Cty. Bd. of Supervisors*, 809 F. Supp. 2d 1084, 1096-97 (D. Ariz. 2011) (citing *Pacific Properties*, 358 F.3d 1097) (noting that the Ninth Circuit has found standing based on general allegations "even in the absence of any allegations that the organization had been forced to divert its resources as a result of the defendant's" conduct).

Defendants do not meaningfully respond to these allegations—or to this extensive authority—other than to point to *Rodriguez*, but that case is inapplicable. In *Rodriguez*, a state

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court granted the city's petition for forfeiture of firearms in plaintiff Rodriguez's home because of her husband's mental health issues, despite her objections. *Rodriguez*, 930 F.3d at 1127-29. Rodriguez appealed to the state court of appeals and lost, changed the registration name for the guns, and was denied once again by the city in her effort to release them. *Id.* at 1129. Rodriguez then sued in federal court, joined by two gun-rights groups. *Id.* Notably, Rodriguez was not a member of either group, and neither group "expend[ed] resources to assist [Rodriguez] apart from incurring litigation costs as co-plaintiffs in her federal litigation." *Id.* at 1134, 1136; *see also id.* at 1134. While the plaintiffs purported to seek prospective injunctive relief, the court noted that the "only specific remedy ever requested was the return of the guns to [Rodriguez]." *Id.* at 1135. The court found the organizations failed to show how this requested relief would "redress any broader harm that the organizations work to combat." *Id.*

Defendants claim this case is comparable because Plaintiffs premise "diversion of resources injury on involvement with Mora-Villalpando's removal proceedings" (Mot. at 21), but that argument relies on a misstatement of both *Rodriguez* and the FAC. The basis for the court's conclusion in *Rodriguez* was not that the organizations diverted resources to only one person's cause, but rather that they *failed to divert any resources to her cause*. Both organizations here have alleged more than enough to show diversion of resources. Further, Plaintiffs never ask the court to enjoin enforcement against Ms. Mora-Villalpando or seek any relief with respect to her removal proceedings, but ask the court to enjoin ICE's policy of targeting activists generally. Such relief clearly would redress the "broader harm that the organizations work to combat." Plaintiffs exist to combat and expose ICE's unjust use of immigration powers; the injunction Plaintiffs seek would stop one such unjust use of ICE's authority and allow Plaintiffs to speak freely about others.

Defendants also contend that, because La Resistencia's mission is to fight and "end all detention and deportation in Washington State," fighting Ms. Mora-Villalpando's deportation "appears entirely consistent with their stated mission" and thus cannot establish injury. Mot. at 21. They are wrong. In *Pacific Properties*, for instance, the plaintiff "alleged that it is a non

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profit corporation 'organized with the principal purpose of helping to eliminate discrimination against individuals with disabilities by ensuring compliance with laws intended to provide access to housing.'" 358 F.3d at 1105. Plaintiff sued to enjoin Fair Housing Amendments Act ("FHAA") violations, and the Ninth Circuit held plaintiff had organizational standing because "[a]ny violation of the FHAA would . . . constitute a frustration of [the organization's] mission." *Id.* (citation and quotations omitted). The court also concluded the organization sufficiently alleged it diverted resources by monitoring the violations and educating the public. *Id.* Under Defendants' rationale, however, fighting to "eliminate discrimination" in housing was what the organization existed to do, and housing discrimination thus could not form the basis for a constitutional injury. The Ninth Circuit has not adopted this nonsensical view.

2. Causation and Redressability

Defendants also wrongly claim that Plaintiffs' injury will not be redressed by prospective relief. To establish redressability, a plaintiff need only show that "a favorable decision will relieve" its injuries. *Civil Rights Educ. & Enf't Ctr. v. Hosp. Properties Tr.*, 867 F.3d 1093, 1102 (9th Cir. 2017) (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982)). A plaintiff has standing to seek injunctive relief where it has alleged either: (1) "a 'credible threat' of recurrent injury," *LaDuke v. Nelson*, 762 F.2d 1318, 1323 (9th Cir. 1985), *amended*, 796 F.2d 309 (9th Cir. 1986) (citations omitted); or (2) "continuing, present adverse effects" stemming from the defendant's actions, *Civil Rights Educ. & Enf't Ctr.*, 867 F.3d at 1098 (citation omitted). *See also McCarthy v. Barrett*, 804 F. Supp. 2d 1126, 1149-50 (W.D. Wash. 2011) (Leighton, J.) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983)) ("either" is sufficient). The "Supreme Court has repeatedly upheld the appropriateness of federal injunctive relief to combat a 'pattern' of illicit law enforcement behavior." *LaDuke*, 762 F.2d at 1324 (citing examples).

Plaintiffs have sufficiently alleged both. Plaintiffs have alleged facts sufficient to show that La Resistencia's members face a threat of retaliation for speaking out, which establishes a "credible threat of recurrent injury" to the organization as well as "continuing, present adverse

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effects" from the ongoing chilling effect. ICE already targeted one La Resistencia leader and member based on her public speech. It has surveilled others as they engage in political speech at NWDC. Miller Decl. Ex. D. In other instances, ICE has targeted multiple members of a single group. *See* FAC ¶¶ 18-19; *see also Ragbir v. Homan*, No. 1:18-cv-01159-PKC (S.D.N.Y., ongoing), Dkt. 100 ¶¶ 312-43 (identifying several members of plaintiff CASA against whom ICE initiated action "as a result of their membership and active roles in CASA," which "mobilizes demonstrations in support of immigrants"). Plaintiffs thus reasonably fear that they will be targeted for exercising their constitutional right to criticize U.S. immigration policies, particularly given ICE's unbridled antagonism toward La Resistencia. *See* Miller Decl. Ex. B ("all I can do to not go and take these punks on"). As a result, community members are still reluctant to speak with La Resistencia, and La Resistencia's members have limited their participation. Mora-Villalpando Decl. ¶¶ 5-6. The injuries from this chilling effect are ongoing and will not be redressed absent an injunction. *See, e.g.*, *AFGE*, 502 F.3d at 1032 (union had standing to seek injunction after one incidence of targeting even if targeted employee was not a member); *Bledsoe v. Webb*, 839 F.2d 1357, 1361 (9th Cir. 1988) (standing where "there is some likelihood that the injury will recur").

Further, Plaintiffs continue to divert resources and suffer impacts to their mission. La Resistencia has added a separate team to manage safety protocols and faces an additional layer of planning to implement safety measures for every event, which requires more volunteers. *See* Mora-Villalpando Decl. ¶ 7. Members of CARW continue to devote resources to these safety measures. *Id.* La Resistencia regularly coordinates with at least three other activists around the country who ICE targeted to support their work and their individual cases. *Id.* ¶ 9. For both groups, "these measures take time and resources that [they] could otherwise devote to assisting detainees, raising awareness, or furthering their core missions in other ways." *Id.*

Defendants rely on the *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) line of cases, but *Lyons* is distinguishable. In *Lyons*, the plaintiff sued to enjoin the alleged police practice of using chokeholds after being placed in a chokehold during arrest. 461 U.S. at 110. The Court

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held the plaintiff lacked standing because he could not show he would be arrested again, much less that he would suffer a chokehold during the arrest. *See id.* The Court noted the absence of "any evidence showing a pattern of police behavior," but Plaintiffs have alleged specific facts showing such a pattern, which is all that is required at the pleading stage. *Id.* at 110 n. 9. "[W]here the defendants have repeatedly engaged in the injurious acts in the past, there is a sufficient possibility that they will engage in them in the near future" to show standing. *Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001) (plaintiffs had standing where defendant had a "policy and engaged in a practice that denied them their rights under the ADA"); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th Cir. 1990) ("In other cases involving INS actions, this court has upheld injunctive relief based on findings that the INS engaged in a persistent pattern of misconduct violating aliens' rights.").

Further, the Ninth Circuit has recognized that *Lyons* was "based on the plaintiff's ability to avoid engaging in illegal conduct" that would result in an arrest. *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1041 (9th Cir. 1999). Here, by contrast, Plaintiffs have alleged they face unlawful ICE conduct regardless of any change in behavior. *See id.* (distinguishing *Lyons* in case alleging pattern of unlawful Border Police stops because Plaintiffs could not "avoid driving near the Mexican border in order to avoid another stop by the Border Police"); *Olagues v. Russoniello*, 770 F.2d 791, 795-96 (9th Cir. 1985) ("[T]he organizations claim that the actions of the officials have interfered with their constitutionally protected first amendment activities in registering voters," and as a result, the organizations did not "ha[ve] to break any law in order to be subjected to alleged unlawful conduct by the officials.").

The Ninth Circuit has also recognized that, in *Lyons* and other cases, the Supreme Court adhered to "prudential limitations circumscribing federal court intervention in state law enforcement matters." *LaDuke*, 762 F.2d at 1324. "Obviously, none of the considerations . . . are implicated in constitutional challenges to the executive branch behavior in federal courts." *Id.*; *see also Orantes-Hernandez*, 919 F.2d at 558 ("The decisions of [the Ninth Circuit]

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involving injunctions against the INS have focused additionally upon the important role of the federal courts in constraining misconduct by federal agents.").[11]

IV. CONCLUSION

Plaintiffs respectfully ask the Court to deny the government's motion.

DATED this 20th day of March, 2020.

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[11] The cases Defendants cite are distinguishable. *See Gleason v. Bundage*, No. 6:17-CV-01415-AA, 2018 WL 2305690, at *1 (D. Or. May 18, 2018) (no standing under *Lyons* to seek injunctive relief where plaintiff alleged school authorities pulled her from class to question her regarding specific incident after incident had occurred); *Lininger v. Pfleger*, No. 17-CV-03385-SVK, 2017 WL 5128170, at *2 (N.D. Cal. Nov. 6, 2017) (individual lacked standing to enjoin local district attorney from prosecuting others after her own alleged malicious prosecution ended); *McCarthy v. Barrett*, 804 F. Supp. 2d at 1149-50 (Plaintiffs failed to provide evidence on summary judgment supporting any ongoing actions against them or continuing harm).

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the United States that, on the date set forth below, I caused a true and correct copy of the foregoing document to be filed with the Court using the CM/ECF system, which will cause all counsel of record to be served with the same.

DATED this 20th day of March, 2020.

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